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NO. 96-60

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

IN RE ELIJAH W. RATCLIFF, ETC.,

PETITIONER

ON PETITION FOR WRIT OF MANDAMUS

REPLY TO BRIEF IN OPPOSITION

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108

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PRELIMINARY STATEMENT AND REPLY TO STATEMENT OF THE CASE

Petitioner has not received a brief in opposition to the immediately entitled and docketed Petition for Writ of Mandamus, and the time for filing such a brief under **U. S. Sup. Ct. Rule 20.3(b), 28 U.S.C.**, has expired. However, a document entitled Brief of Respondent, with minute amendments to a Brief of Respondent received in the earlier docket, No. 95-799, was received, and it is addressed, to wit:

The Brief of Respondent served under date of the 8th day of August, 1996, alleges, at p. 1 thereof, that the trial Court granted a plea to the jurisdiction, but it offers no hint as to the identity of the fiat to which it alludes (See Petition for Writ of Mandamus pp 1, lines 1 - 7, A-17 - A-18, and A-38 - A-39).

Petitioner did indeed perfect an appeal to the Court of Appeals, Third Court of Appeals District of Texas, Austin, Texas, followed by an Application for Writ of Error to the Supreme Court of Texas, No. 95-1232, but he has not been furnished with notice of a denial of such application by personnel of the Supreme Court of Texas, and such notification is required pursuant to **Vernon's Ann. Tex. Rules Ap. Proc., Rule 91.**

Thus, the immediate protocol is not limited to the Judges of the District Court below, but it relates, also, to the State Court of Appeals at Austin, Texas, as well as to the Supreme Court of Texas, which Supreme Court has, apparently, breached either **Vernon's Ann. Tex. Rules Ap. Proc., Rule 91 or Rule 134.**

The cited Rule 91 provides:

"On the date an opinion of an appellate court is handed down, the clerk of the appellate court shall mail or deliver to the clerk of the trial court, to the trial judge who tried the case, and to the State, and each of the defendants in a criminal case, and to each of the parties to the trial court's final judgment in a civil case, a copy of the opinion handed down by the appellate court and a copy of the judgment rendered by the appellate court as entered in the minutes. Delivery to a party having counsel indicated of record shall be made to counsel. The clerk of the trial court shall file a copy of the opinion among the papers of the cause in such court. When there is more than one attorney for a party, the attorneys may designate in advance the one to whom the copies of the opinion and judgment shall be mailed."...

The cited Rule 134 provides:

"When the application shall have been filed for a period of ten days, if the court determines to deny, refuse or dismiss the same, whether or not the respondent has filed a brief in response, the clerk of the court will retain the application, together with the record and accompanying papers, for fifteen days from the date of rendition of the judgment denying, refusing or dismissing the writ. At the end of

that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of a motion for rehearing, the Clerk of the Supreme Court shall transmit to the court of appeals a certified copy of the orders denying, refusing or dismissing the application and of the order overruling the motion for rehearing and shall return all filed papers to the Clerk of the Court of Appeals, except the application for writ of error, any brief in response and any other briefs filed in the Supreme Court."

Still further, **Vernon's Ann. Tex. Rules Ap. Proc., Rule 135**, provides:

"When the Supreme Court grants, denies, refuses or dismisses an application for writ of error or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by letter."

The magisterial irregularities contravening the cited rules of court are due process violations in isolation meriting the issuance of the Great Writ to decipher culpability in the premises preliminary to enforcing Petitioner's remedy.

REPLY TO STATEMENT OF THE FACTS

Respondent State Bar of Texas alleges, in its Statement of the Facts, the intended contents and imports of its motions and the resulting orders of the

trial Court. However, the best evidence of the import of the Court's orders and judgment is a true and correct copy of such orders and judgment as referenced by Petitioner in the Petition for Writ of Mandamus at its Statement of Case, pp 5 - 12.

It is fundamentally material that the Brief of Respondent, filed in behalf of Respondents State Bar of Texas and Karen Joihnson, its Executuve Director at the pertinent interim, makes no reference to any specific order, or orders, that it relies upon to support its allegations that its special exceptions were sustained, as dictated by astute and professional briefing practices (See **U. S. Sup. Ct. Rules 14.1(g)(i); 15.2; 20.2 and 20.3, 28 U.S.C.**; also, see **Vernon's Ann. Tex. Rules Ap. Proc., Rules 74(d), (e) and (f), and 131(e) and (f).**

Similarly, it is fundamentally insufficient that the subject Brief of Respondent makes no professionally specific reference to an order which it alleges, at p. 5 thereof, sustains its plea to the jurisdiction.

Not only does the Brief of Respondent fail to direct the Supreme Court's attention to a particular record, transcript, appendix or exhibit reference for the orders to which it alludes, it does not even offer a date upon which any alleged order was rendered or entered so as to facilitate identification of the basis for its allegation that a proper order or judgment was entered by the trial Court.

REPLY TO OBJECTION TO JURISDICTION

The Petition for Writ of Mandamus,

appropriately, asserted jurisdiction, at p. 1, pursuant to **28 U.S.C. § 1651**, without restriction to Section (a) thereof, but in conjunction with **28 U.S.C. §§ 1257 and 1447(d)**, at p. 2 thereof. Such Brief of Respondent totally disregards the jurisdiction provided by **28 U.S.C. § 1257(a)** making

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had"

reviewable by the United States Supreme Court by writ of certiorari

> "where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or treaties or statutes of, or any commission held or authority exercised under, the United States."

REPLY TO ARGUMENT

The Brief of Respondent, at p. 7, offers a blanket allegation that the Supreme Court lacks jurisdiction to issue a writ of mandamus, and alleges, further, that

> "Federal courts do not have subject matter jurisdiction over these types of challenges,"

citing two Fifth Circuit cases, without correlating any nexus between such Federal district court challenges and the immediate proceeding initiated in the

State district courts of Travis County, Texas, and without addressing the jurisdiction which the United States Supreme Court acknowledged in **Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia**, 688 F.2d 218, certiorari denied 103 S.Ct. 3124 (1983), 462 U.S. 1137, 77 L.Ed.2d 1375, and **District of Columbia Court of Appeals v Feldman**, 103 S.Ct. 1303 (1983), 460 U.S. 462, 75 L.Ed.2d 206.

Liedtke v State Bar of Texas, 18 F.3d 315 (5th Cir. 1994), expressly states that an

> "Attorney's recourse following alleged improper disbarment in state court disciplinary proceedings was with state appelate courts and thereafter United States Supreme Court on application for writ of certiorari, not by complaint to federal district court."

Musslewhite v State Bar of Texas, 32 F.3d 942 (5th Cir. 1994), is similarly distinguishable from our immediate facts as the Fifth Circuit ruled that Federal courts do not have subject matter jurisdiction over challenges to state court decisions in pasrticular attorney disciplinary cases arising out of judicial proceedings, notwithstanding, the allegations of the complaint.

At p. 8, second original paragraph, Counsel for Respondent argues against the joinder of parties engaged by Petitioner. However, the issue of severance was raised in the trial Court, and the

propriety of such pleading option as exercised by Petitioner was acknowledged by the trial Court (See Appendix to Petition, pp A-21 - A-22 and B-44 - B-46). **Vernon's Ann. Tex. Rules Civ. Proc., Rules 48, 49, 50, 51 and 63.**

While it is true that Petitioner has cited ample textual State statutory, precedent and constitutional authority to resolve questions of attorney licensing, if applied fairly, it is the unrelenting, depriving, application of the subject complexity of laws prevailing over the pertinent interim, comprising an unlawful and unsustainable State policy, which contravenes Federal due process. **Consumers Union of the United States v Virginia State Bar and the Supreme Court of Virginia, supra.**, and **District of Columbia Court of Appeals v Feldman, supra.**

At p. 1 of the Brief of Respondent, lines 4 - 6, Counsel for Respondent misrepresents that:

> "Petitioner does not present any arguments that Texas substantive law is insufficient to resolve questions of attorney licensing."

Where race, creed, color or ethnicity is not part of the equation, such a proposition might have validity, but Respondents have notoriously declined to afford Petitioner due process of law and equal protection of the laws as mandated by **United States Code, Const. Amend. XIV.** Such Brief makes reference to pp 1 - 2 of the Petition, devoted in accordance with **U. S. Sup. Ct. Rules 14.1(d) and (2), 28 U.S.C.**, to a

recitation of the "Opinions Below" and "Jurisdiction," which sections of the Petition do not purport to engage exhaustive argument on the substantive irregularities.

The Petition obviously concedes that considerations of comity make the Supreme Court of Texas the primary determiner of the merits on Petitioner's complaint against Respondent State Bar of Texas, but Petitioner maintains further that at some meaningful time, the Supreme Court of Texas must afford Petitioner and his business interests due process of law and equal protection of the laws, following the satisfactory exhaustion of State remedies, under standards established by the Supreme Court of the United States. **42 U.S.C. § 1981, et seq.; United States Code, Const. Amends. XIII and XIV; Nesbern v Lovelet**, Inc., 308 F. Supp. 407 (SD OH 1968)

At p. 8 of Respondent's Brief, 16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4018 (1977), is presented as authority that the Suprme Court lacks jurisdiction to issue the writ. However, such authority supports the contrary, providing, as updated, that:

> "Mandamus would be justified to prevent a state trial judge from entering an order that could not conceivably be squared with the Supreme Court's mandate."

16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4018 (West Publishing Co., St. Paul, MN 1996).

Respondent's cited authority, also, at § 4021 thereof, supports the granting of the extraordinary writ arising out of the failure of the Supreme Court of Texas to notify Petitioner of its ruling, if any, on the Application for Writ of Error, in accordance with **Vernon's Ann. Tex. Rules Ap. Proc., Rules 91 and 135**, or, alternatively, failure to rule on the Application in due course as prescribed by **Rule 134**, thereof. 16 Wright, Miller, Cooper & Gressman, **Federal Practice and Procedure:** Jurisdiction § 4021 (West Publishing Co., St. Paul, MN 1996). **Johnson v Mississippi**, 108 S.Ct. 1981 (1988), 1987, 486 U.S. 578, 586, 100 L.Ed.2d 575.

Relying further on the subject authority cited by Respondent, at § 4019, and further addressing Respondent's "Objection to Jurisdiction" in its Brief at p. 6, it is clearly set forth that "the Supreme Court need not defer to state court interpretation of federal law."

Gulfstream Aerospace Corp. v Mayacamas Corp., 108 S.Ct. 1133 (1988), 485 U.S. 271, 99 L.Ed.2d 296, cited by Counsel for Respondent, has no similarity, whatsoever, to our immediate facts as there the parties were concerned with an attempt to stay or dismiss an action filed in Federal district court subsequent to the filing of an action involving the same issues in a State court. This Court held that the subject order denying a stay or dismissal did not purport to end the litigation, but it insured that the proceeding would continue in the Federal district court, inconsistent with a final judgment contemplated by **28 U.S.C. § 1291.**

Contrary to our immediate facts, the petition therein did not present an abuse of discretion by the subject district court in refusing to follow a technical precedent evolving from the distinction between Federal proceedings at law as contrasted with those in equity where, under current procedural rules, and the merger of law with equity, the precedent is no longer sound, practical or applicable.

Finally, **United States v Harper**, 729 F.2d 1216 (9th Cir. 1984), cited by Respondent, in which the writ was issued to preempt the district court from proceeding further under the Espionage Act which was determined to be unconstitutional attributable to insufficient legislative guidelines to control the fact finder's discretion in imposing the death penalty, is consistent with the arguments presented by the immediate Petition for Writ of Mandamus.

CONCLUSION:

Mandamus relief should be granted, preliminary to issuing the writ of certiorari.

Respectfully submitted this 20th day of August, 1996.

_____

PETITIONER, PRO SE

Elijah W. Ratcliff,
Consultant
P. O. Box 862
Livingston, Texas 77351
Ph. 409 327-7108